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Flexible Funding in the Regional Extramural Operating Plan Superfund Management Review, Recommendation No. 10

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MEMORANDUM

SUBJECT: Flexible Funding in the Regional Extramural Operating Plan -- Superfund Management Review, Recommendation #10

FROM: Don R. Clay
Assistant Administrator

TO: Waste Management Division Directors, Regions I-X

Purpose:

The purpose of this memorandum is to reinforce and clarify the funding flexibility currently available to the Regions and to discuss the FY 90 flexible funding initiatives and funds control process.

Background:

In June 1988, the Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER), following recommendations that resulted from a HQ/Regional workgroup effort, issued the first directive on flexible funding. This memorandum established that under certain conditions, Regions could redirect most remedial design (RD) funds to other high priority actions. These actions included time critical removals, potentially responsible party (PRP) oversight, and other RD or Remedial Action (RA) projects in the Region. The funds that could be redirected were those that were saved as a result of PRP takeovers or lower prices compared to original cost estimates. This policy would be extended to funding RA projects; however, other national program needs and the oversight activities of PRP actions would be funded first.

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In 1989, Congress imposed new reporting requirements on the Agency for the Response program element. The agreement originally stated that the Agency would report through the following eight categories:

- Pre-remedial
- Remedial Investigation/Feasibility Study (RI/FS)
- RD
- RA
- removal actions
- response support
- remedial support
- removal support

After further discussions, Congress determined that the Response Program must report on four of these categories: RI/FS, RD, RA, and Removal Action. This arrangement will be continued in FY 90.

The Agency will report the status of the current operating plan compared with the original operating plan within 30 days following the end of each quarter. In addition, we must notify Congress immediately if the cumulative changes in a single category exceed certain thresholds: $10 million for RA, $2 million for all others. Since the reporting requirements are after the fact, this requirement has no impact on the flexible funding policy. Transfers of $500 thousand or larger between the TGB (Enforcement) and TFA (Response) accounts require prior Congressional approval.

Objective:

This memorandum is to provide guidance to the Regions on the degree of flexibility that may be exercised in the funding of Superfund activities during FY 90.

Implementation:

FY 90 Advice of Allowance (AOA) Structure:

In FY 90, the Comptroller will issue the following allowances to the Region:

- Site allowance for removal actions - This allowance provides funding for removal actions and is issued non-site specifically.

- Site allowance for RI/FS - This allowance provides funding for all new and ongoing RI/FS projects and is issued non-site specifically.

- Site allowance for RD - This allowance provides funding for all new and ongoing RD projects and is issued non-site specifically.

- Site allowance for RA - This allowance provides funding for all new and ongoing RA projects. This allowance is issued site specifically.

- Regular or other response allowance - This allowance is issued non-site specifically and contains Response funds for pre-remedial activities and removal, remedial, and response support activities.

- Regular Enforcement allowance - This allowance is issued non-site specifically and contains resources for the technical enforcement program.

The Comptroller will issue two AOAs. The "A" allowance will include funding for removal actions, RI/FS, RD, and RA projects. The "Regular" allowance will include everything else, including non-OSWER Superfund accounts.

The operating year Superfund Comprehensive Accomplishments Plan (SCAP) is updated regularly. Negotiations are held prior to the fiscal year to finalize the annual Regional budget and at mid-year to make adjustments in the budget for the last half of the year. In addition, adjustments may be made prior to and during the fourth quarter. Each quarterly Advice of Allowance is approved based on the financial data in SCAP the month before the start of the quarter. This allows Regions to make changes in planned obligations (within their annual Regional budget) prior to the issuance of the allowances.

Flexibility in the RA Allowance:

The shortage of RA funds and the implementation of RA prioritization criteria will reduce the Regions' ability to redirect RA funds. RA projects scheduled to begin in the first three quarters of FY 90 were evaluated and ranked in accordance with the environmental prioritization scheme for construction projects established by HQ and implemented by the Regions. Based on the results of the environmental prioritization ranking panel, a list of projects that will receive RA funds was developed. Ranking forms used for prioritization should be completed for new projects that become ready for construction. The peer review panel will rank projects either by conference call or during the regularly scheduled meetings. All projects will be re-evaluated at mid-year and prior to the fourth quarter based on schedules, and/or improvements to the prioritization process.

Approval from AA-OARM and AA-OSWER is required for the redirection of RA funds to other program areas. Given the

constraints in RA funding, HQ approval is highly unlikely. Funding for ongoing projects, mixed funding settlements, long term response, and operations and maintenance, however, are not subject to the prioritization or approval processes and may be reprogrammed by the Regions. In addition, $10 million is available to support RAs costing less than $2 million. These projects will be funded on a first ready first funded basis (without regard to environmental priority).

RA funds made available as a result of a PRP settlement or bids coming in below expected amounts will be returned to HQ for funding of other priority RA projects. In some cases, HQ may recommend that the Region retain the funds to support unanticipated RA cost escalations. In situations where the PRP takes over a planned Fund-lead project, Regions should retain a portion of the funds for oversight of PRP work.

Non-Site Specific Funding Flexibility:

Within the other response, removal, RI/FS, RD, and Enforcement allowances, Regions may redirect funds to meet site or activity priorities. Redirecting funds between these allowances requires OSWER program office approval of a SCAP amendment and Comptroller approval of a change request. It is important to note that transfers of funds out of the removal action category are rarely approved because Congress has specifically added resources to this area. Regions may reprogram funds more easily into the removal action category from other non-site specific allowances. The changes in planned/actual obligations must be reflected in CERCLIS.

Funds saved within the RI/FS and RD accounts as a result of a settlement or where actual costs are lower than estimated will generally stay within the Region. These funds may be used within the allowance for other RI/FS or RD projects, respectively. In most cases, funding for RI/FS may not exceed the Fund ceiling for each Region. The ceiling may be increased in some instances to augment PRP contribution(s) or to fulfill citizen requests for further technical work. In addition, Headquarters approval will generally be given for the redirection of unused funds to the following priorities:

- classic emergencies
- removal actions to make NPL sites safe
- ongoing RA projects
- funds necessary to oversee PRP activities

A SCAP amendment and change request must be approved before the funds can be redirected to activities outside the allowance.

New Flexibility:

As a result of recommendations in the Superfund Management Review and other OSWER initiatives, additional flexible funding options have been identified and will be implemented in FY 90:

- To support the bias for action and the creation of safe sites, funds saved through PRP settlements or other means may be redirected toward the removal program after provisions are made for PRP oversight. These funds can be transferred to the removal allowance after HQ approval of a SCAP amendment and change request.

- Regions may redirect RD funds when a consent decree is referred to the Department of Justice for lodging or when PRPs indicate they will comply with a Unilateral Order (UAO).

- Regions may retain and redirect non-RA remedial response funds made available as a result of the following actions:

  - PRP takeovers or settlements;
  - RI/FS or RD bids that are less than planned amounts; and
  - actual obligations less than planned obligations.

Special non-site contingency accounts have been created in the CERHELP database to provide each Region with a means to "hold" and track the amount of funds made available through the actions described above. As Regions identify uses for these funds, the contingency account should be reduced. If the funds will be used for an activity supported by a different allowance, a SCAP amendment and change request must be approved prior to obligation.

Response funds can be used to address deficient PRP projects. Regions are allowed to redirect funds to accommodate this need. PRP projects that will require substantial Fund involvement to correct should be coded as Fund take-overs in CERCLIS. Funding should be transferred to the appropriate Response (TFA) AOA category. For projects requiring limited Fund involvement, funds should be transferred to the Enforcement (TGB) AOA. Again, a SCAP amendment and change request will be necessary for transfers between AOA categories.

Priority Order for Identifying Sources of Funds:

Described below is the approach that Regions should follow in identifying sources of funds.

- As a first step, Regions should determine if funds are available in the CERHELP contingency account that can be redirected within or between allowances to start the response action.

- If no contingency funds are available, funds planned for obligation in future quarters (within the Region's annual budget), that will not be used as originally planned, should be tapped.

- After mid-year, funds made available within the annual Regional budget as a result of the mid-year or third/fourth quarter adjustment process, should be used to initiate the response action.

- As a last resort, Regions may request an increase in their annual budget through the redirection of funds made available as a result of mid-year or third/fourth quarter adjustments in other Regions.

Conclusion

Except for RA funds, the Regions currently have considerable flexibility in the use of the extramural funds received in their annual operating plan. In some cases, HQ approval is required prior to redirecting the funds. Though the approval process is simple, it requires input from several HQ offices and may take up to two weeks to complete.

The HQ/Regional workgroup on flexible funding is exploring further options to increase Regional fund flexibility. We will keep you informed on their progress.

cc: Bruce Diamond
Sally Mansbach
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